vailed. *Nicol* v. *Nicol* (1836) 16 Wendell 446; Martin v. *Kanouse* (1859) 17 How. Prac. Rep. 146. But the enactment of N. Y. Civ. Code § 66 as now contained in the Judiciary Law, N. Y. Consol. Laws c. 30 (Laws of 1909 c. 35) § 475, providing that the attorney's lien should attach to client's cause of action even before judgment and prevent a settlement before or after judgment to the prejudice of the lien, offered an opportunity for the revival of the opposite view. The act, without apparent justification, was interpreted as making an attorney an equitable assignee of his client's claim and for that reason superior to any right of set-off. *Smith* v. *Cayuga Lake Cement Co.* (1905) 107 App. Div. 524, 95 N. Y. Supp. 236. It would appear that this result is due rather to the inclination of the court than to the effect of the statute. This may be inferred from the fact that, although the lien of the defendant's attorney who sets up no counterclaim is without the purview of the statute and can still be cut off by a settlement before judgment; *Saranac and Lake Placid R. R.* v. *Arnold* (1902) 37 Misc. 514, 75 N. Y. Supp. 1003; aff'd 72 App. Div. 620, 76 N. Y. Supp. 1032; nevertheless when a judgment for costs is obtained in such an action, the attorney's lien, a simple common law right, is no longer subject to the right of set-off. *Agricultural Insurance Co.* v. *Smith* (1906) 112 App. Div. 840, 98 N. Y. Supp. 347. The principal case is a decision of New York's highest court and overrules the older doctrine of *Nicol* v. *Nicol, supra,* which has been the basis of law in many jurisdictions holding the right of set-off superior.

BANKRUPTCY—PROVABLE CLAIMS—UNLIQUIDATED TORT.—Paragraph *a,* § 63 of the Bankruptcy Act (1898), 30 Stat. 562, U. S. Comp. Stat. (1916) § 9647, eumerates the debts which are provable against the bankrupt's estate but makes no mention of unliquidated tort claims. Paragraph *b* declares that unliquidated claims may be liquidated pursuant to an application to the court. *Held,* that the sole purpose of paragraph *b* is to permit unliquidated claims coming within the provisions of paragraph *a* to be liquidated as the court shall direct, and that neither paragraph authorizes proof of unliquidated demands against the bankrupt for fraud and deceit, notwithstanding § 17 of the Act, as amended by Act of February 5, 1903, 32 Stat. 798, U. S. Comp. Stat. (1916) § 9601, providing that a discharge "shall release a bankrupt from all his provable debts except such as are liabilities" for frauds, etc. . . . *Schall* v. *Camors* (1920) 40 Sup. Ct. 135.

While the liquidation of unliquidated claims is provided for under § 63 *b* of the Act, there has been some doubt as to the kind of claims referred to. It was held that paragraph *b* merely provided a procedure for the liquidation of the class of claims covered by paragraph *a* and that therefore tort claims, including fraud, not being within paragraph *a,* were not provable. See *Dunbar* v. *Dunbar* (1903) 190 U. S. 340, 350, 23 Sup. Ct. 757. It has been argued, however, that § 17 must be read in conjunction with § 63 and that "a discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as . . . are liabilities for obtaining property by false pretenses or false representations" implies that a claim for fraud is a provable debt. See *Clarke* v. *Rogers* (1913) 228 U. S. 534, 33 Sup. Ct. 587. This question was regarded as open as recently as 1904. See *Crawford* v. *Burke* (1904) 195 U. S. 176, 187, 25 Sup. Ct. 9. But since that time there has been an unbroken line of authorities recognizing the inter-

pretation that claims based solely upon torts are not provable under § 63, *In re New York Tunnel Co.* (C. C. A. 1908) 159 Fed. 688; *In re Southern Steel Co.* (D. C. 1910) 183 Fed. 498, and that § 17 does not enlarge the class of provable claims but purports merely to specifically except certain tort claims from destruction by a discharge. *In re New York Tunnel Co., supra.* The want of harmony between § 17 and § 63 has been specifically recognized, and § 63, which is devoted solely to declaring what debts are provable, has been held controlling. *Brown & Adams* v. *United Button Co.* (C. C. A. 1906) 149 Fed. 48, 53. Naturally, where the creditor can waive the tort claim and sue in contract or quasi-contract, the claim may be liquidated and proved under § 63 *a* and *b*, *Reynolds* v. *New York Trust Co.* (C. C. A. 1911) 188 Fed. 611, notwithstanding the fact that the claim has been prosecuted in tort. *Crawford* v. *Burke, supra.* The instant case, the first to squarely raise the issue before the Supreme Court, is in line with the great weight of authority in the lower courts.

BANKRUPTCY—REFEREE'S JURISDICTION—A creditor entered a claim against a bankrupt estate for something over $6,600. The claim was allowed but the trustee counterclaimed for $43,700. Over the insistent objection of the creditor, the referee proceeded to a hearing upon the merits of the counterclaim, and thereafter entered an order adjudging the creditor to be indebted to the estate in the amount of $37,080, being the difference between the trustee's counterclaim and the creditor's claim. *Held,* a referee is without jurisdiction, over the objection of a creditor, to make a finding of the amount due from him to the bankrupt estate in excess of his claim against the estate. *In re Continental Producing Co.,* (D. C., So. Distr. California, 1919) 261 Fed. 627.

Under § 2 of the Bankruptcy Act of 1898, 30 Stat. 545 U. S. Comp. Stat. (1916) § 9586, the district courts have jurisdiction over proceedings to allow or disallow claims in bankruptcy. But except in a few cases specifically mentioned in the statute, they have not jurisdiction over suits instituted by the trustee, unless they would have had jurisdiction irrespective of the bankruptcy, or unless the defendant consents. Sec. 23*b*, 30 Stat. 552, U. S. Comp. Stat. (1916) § 9607, as amended in 1903, 32 Stat. 798, and 1910, 36 Stat. 840. In the instant case, the consent of the defendant was lacking and it does not appear that the court had jurisdiction on any other grounds. But it is extremely doubtful whether, even if the defendant's consent had given the district court jurisdiction, it could have been delegated to a referee. In one of the exceptional cases under § 23*b* above referred to, although it was provided that suits by the trustee to set aside transfers under certain conditions might be brought either in any court of bankruptcy or in the court in which the bankrupt might have brought such an action if there were no bankruptcy, the referee was held not to constitute a court of bankruptcy within the meaning of the section. *In re Overholzer* (1909) 23 A. B. R. 10; Brandenburg, Bankruptcy (4th ed.) § 330; *contra, Matter of O'Brien* (1908) 21 A. B. R. 11. This special and extended jurisdiction of the district courts having been denied to the referee under one clause of § 23*b*, it might be analogically reasoned that it would be denied under another clause of the same section, and that even though the defendant had consented in the instant case, the referee would not have had jurisdiction. On the above two grounds, the conclusion of the court is sound.